



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 25, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dodge County Dept. of Human Services to recover child care assistance, a hearing was held on September 9, 2015, by telephone.

The issue for determination is whether petitioner was overpaid child care assistance.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Dodge County Dept. of Human Services  
143 E. Center Street  
Juneau, WI 53039-1371

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. J.M., the mother of petitioner's son, began to receive child care on June 23, 2014. J.M. reported that petitioner did not live with her.
3. The county later determined that petitioner did live with J.M. After obtaining petitioner's income information, the county determined that J.M. was overpaid \$3,153.97 from August 1 through October 31, 2014 because household income would have exceeded the child care limits.

- [REDACTED]
4. The county notified J.M. of the overpayment, claim no. [REDACTED], and she appealed. In Fair Hearing Decision no. CCO-[REDACTED], dated June 8, 2015, I upheld the determination, finding that petitioner did live with J.M. during the period in question. Petitioner testified at the hearing.
  5. Following the decision in case no. CCO-[REDACTED], the county notified petitioner by a letter dated June 10, 2015, that he also was liable for claim no. [REDACTED].
  6. Petitioner was a member of J.M.'s household during the overpayment period.

### **DISCUSSION**

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Importantly for this case, Wis. Admin. Code, §DCF 101.23(3)(a) provides: "Liability shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. ... 49.155, ... Stats., during the period that he or she is an adult member of the same household, but his or her liability is limited to such period." The clear meaning of this legal provision is that even if a parent was not listed on the case for benefit purposes, he is liable for any overpayment paid to the child care unit if he was an adult member of the household.

The issue is whether petitioner was an adult member of J.M.'s household during the period in question. Obviously, the prior decision would appear to resolve the issue as I conducted a hearing and concluded that petitioner lived with J.M. during the period in question. However, petitioner was not a party to that hearing and appeared only as a witness. I noted in the decision that a key factor was that petitioner's mother told the investigator that petitioner lived with J.M., and that the parties did not call petitioner's mother to testify. Petitioner, as a witness who did not know that he might be determined to be liable later, had no authority to call his mother as a witness. Thus I conclude that petitioner can still address the living situation since he was not a party to the prior action. Since petitioner and J.M. are not married, he had no way of knowing he would be found liable after the decision was issued.

That said, I again conclude that petitioner was a member of J.M.'s household. Petitioner testified that he went to the home every day and would stay over sometimes, but other times would leave when the child went to bed. His mother agreed that although she did not consider him to be living at J.M.'s home, he was there regularly and did sleep over about half the time.

The Department's Child Care Manual, at §1.2.0, defines "Two Parent Households" as those consisting of either married parents or non-married co-parents. Certainly petitioner was co-parenting his child by going to the home every day after work. Essentially the evidence before me is that petitioner was at the home

every day and slept there as well, except when he didn't. If he was that involved with the household, he should have been responsible for supporting the child care cost within the household.

Under state law, petitioner was an adult member of an overpaid child care household, and thus is liable for the overpayment.

### **CONCLUSIONS OF LAW**

Petitioner is liable for a child care overpayment issued to the mother of his child because he was a member of her household during the overpayment period.

**THEREFORE, it is** **ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

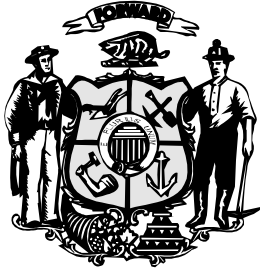
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of September, 2015

---

\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals





## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 14, 2015.

Dodge County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud